

**BEFORE THE
STATE BOARD OF MEDIATION

STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF FIRE)	
FIGHTERS, LOCAL NO. 2543,)	
)	
Petitioner,)	
)	
v.)	Public Case No. 77-001
)	
CITY OF POPLAR BLUFF, MISSOURI,)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION**

Findings of Fact

This matter appears before that State Board of Mediation upon International Association of Fire Fighters, Local No. 2543, (hereinafter referred to as "Petitioner"), filing a Petitioner for the determination of an appropriate bargaining unit and majority representative status for all Fire Department employees of the Poplar Bluff Fire Department, Poplar Bluff, Missouri (hereinafter referred to as City), but excluding the positions of Fire Chief, Assistant Fire Chief, Arson Investigator, and Mechanic

The Board has jurisdiction to hear and decide this matter pursuant to Section 105.525, RSMo. 1969, which provides in pertinent part:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation."

A hearing in this case was conducted by a quorum of the Board at the Butler County Courthouse in Poplar Bluff, at which time the following evidence was adduced.

The Fire Department within the City currently includes the following positions: one Fire Chief, one Assistant Fire Chief, one Arson Investigator, one Mechanic, three Captains, six Lieutenants, nine Drivers, three Assistant Drivers, and six Hosemen. These employees are stationed at three separate facilities located throughout the City. Fire Station No. 1 houses the Chief, Assistant Chief, Arson Investigator, and Mechanic; these men work a regular shift of eight hours, five days a week. The remaining work force at Station No. 1 consists of three Captains, three Drivers, and three Assistant Drivers. Stations No. 2 and 3 are each manned by three Lieutenants, three Drivers, and three Hosemen.

The Captains, during the twenty-four hour shift, are in charge of a company within the Department. A company consists of the Captains, one Drivers, one Assistant Driver, and one Hoseman at Station No. 1; one Lieutenant, one Driver and one Hoseman at Stations No. 2 and No. 3.

The City has objected to the Fire Chief, Assistant Fire Chief, Arson Investigator, Mechanic, Captain, and Lieutenant being included in an appropriate unit, for the reason that these positions are supervisory and, therefore, do not share a clear and identifiable community of interest with the other employees within the Department.

Based upon the pleadings of both parties, it is evident that the only positions in dispute are that of the Captain and Lieutenant. Each of these two classifications will be addressed separately in this opinion.

Captain

In reference to the position of Captain, it should be stated that at the time of the hearing, there was no direct testimony as to their particular duties and responsibilities. The only evidence

the Board received concerning this classification was the City's Fire Department Manual which lists, under fifty-four separate paragraphs, a job description for that of a Captain. To summarize, he is responsible for implementing the policies, rules and regulations of the Department; also for the training and instruction of the member of his company. He has the authority to suspend, from duty, any subordinate member for a violation of the rules and regulations. In addition, he has the authority to impose penalties involving extra duty assignments, loss of privileges or other penalties. The Captain resides with the men at the fire house and responds to fire alarms at which he commands and directs operations unless relieved by a superior officer.

Lieutenant

The Petitioner, in the presentation of its case, called two Lieutenants to the stand to testify as to their particular duties and responsibilities. The Lieutenant is one rank lower than that of a Captain and is responsible for seeing that the men under his command perform their duties properly. He resides with the men at the fire house, accompanies them in the fighting of fires, and is in charge of training them in fire fighting techniques. In fulfilling his duty in keeping the station in proper condition, the Lieutenant assists the men in their daily household cleaning chores; this practice is a matter of necessity due to the limited work force. The evidence indicates that the Lieutenant may have the authority to suspend; however, this authority could only be exercised in unique or emergency situations. Lieutenants, along with the other officers of the Department, attended regular policy meetings.

Conclusions of Law

Section 105.525 RSMo. 1969 states:

"Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation . . ."

Appropriate unit is defined in Section 105.500 (1) RSMo. 1969 as:

“ . . . a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.”

It is the position of this Board that supervisors cannot be included in the same bargaining unit as the employees whom they supervise, because of a lack of community interest. Therefore, it is necessary to make a determination as to whether or not the positions of Captain and Lieutenant within the Poplar Bluff Fire Department possess sufficient supervisory qualities to exclude them from a unit of firefighters. In the case of St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO vs. City of St. Louis, Missouri, Public Case No. 76-013, and St. Louis County Fire Fighters Association, Local 398, IAFF, vs. Chesterfield Fire Protection District, Public Case No. 76-022, this Board set forth the factors which are considered in determining whether an employee is a supervisor. They are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

Captain

The burden of proof in this case lies with the Petitioner. The petitioning party has the duty to make his case; in this instance to develop the evidence to demonstrate to this Board that the

Captains share a community of interest with the other firefighters. The Petitioner must remove the issue from a field of conjecture and establish it by substantial evidence of probative value, or by inferences reasonably to be drawn from the evidence. Farnham v. Boone, 431 SW2d 154, (Mo. 1968). This the Petitioner has failed to do.

The Board received into evidence a copy of the City's Fire Department Manual which in part sets forth the duties and responsibilities of the position of Captain. Upon review, it appears that the Captain may hold a supervisory position; however, the Board is without sufficient evidence to make such a determination, and therefore, excludes the Captain from an appropriate unit for the reason stated; namely, that the Petitioner has failed to meet his burden of proof.

It should be understood that each case as it appears before the Board rests on its own merits. The Board may decide in future cases, as it has done in prior decisions, that the position of Captain should be included in appropriate units.

Lieutenant

The Lieutenant in performance of his duties commands a small number of men and has only limited authority in reference to suspension.

The Lieutenant does not serve in a supervisory capacity as defined by this Board. The competent and substantial evidence upon the whole record clearly indicates that a Lieutenant shares an identifiable community of interest with the other fire fighters and should be included in an appropriate unit.

Decision

It is the decision of this Board that the following unit in the Fire Department of the City of Poplar Bluff, Missouri is appropriate:

All employees of the Fire Department of the City of Poplar Bluff including the positions of Hoseman, Assistant Driver, Driver, and Lieutenant, but excluding the positions of Captain, Arson Investigator, Mechanic, Assistant Chief, and Chief.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by International Association of Fire Fighters, Local No. 2543.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within (10) days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Dated this 17th day of January, 1978.

STATE BOARD OF MEDIATION

/s/ Michael Horn
MICHAEL HORN, CHAIRMAN

/s/ Harry Scott
HARRY SCOTT, EMPLOYER MEMBER

/s/ Robert Missey
ROBERT MISSEY, LABOR MEMBER